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Paper No. 23

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APR 13 2005

In re Application of:
James L. Overbeck et al.
Serial No.: 09/733,162
Filed: December 8, 2000
For: OPTICAL MEASUREMENT DEVICE AND
RELATED PROCESS

DECISION ON PETITION TO
WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed September 13, 2004, to withdraw the holding of abandonment of the above-identified application.

The petition is GRANTED.

A non-final Office action was mailed on June 17, 2003, setting a three-month shortened statutory period for filing a reply. In the apparent absence of a response, a Notice of Abandonment was mailed on August 25, 2004.

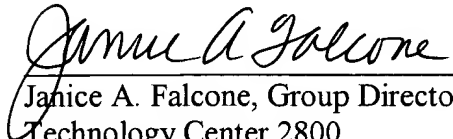
Petitioner asserts that a reply was timely filed. In support of the assertion that a reply was timely filed, petitioner submitted the following papers as evidence of timely submission: 1) a copy of a response entitled "RESPONSE" which includes on a separate page a Certificate of Mailing dated September 15, 2003, and 2) a statement in support of the petition under 37 C.F.R. § 1.8(b) signed by petitioner attesting to his personal knowledge that the response was submitted to the PTO on September 15, 2003.

The response filed September 15, 2003 was not of record at the time the Notice of Abandonment was mailed but was actually received in the PTO on September 22, 2003 and has since been associated with the file. It is noted that a petition for a change of inventorship was received on October 14, 2003.

The Notice of Abandonment mailed August 25, 2004 is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

The application file is being forwarded to the Technical Support Staff for entry of the amendment and of the petition to change inventorship. From there, the file will be returned to the examiner for further examination.


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